

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.,)	No. 68 CV 07488 MV/JHR
STATE ENGINEER, et al.)	
)	
Plaintiffs,)	Rio Santa Cruz Adjudication
)	
v.)	and
)	
JOHN ABBOTT, et al.)	70 CV 08650 MV/WPL
)	Rio de Truchas Adjudication
)	
Defendants.)	Consolidated
)	

CITY OF ESPANOLA STATUS REPORT

Stein & Brockmann, P.A., files this Status Report on behalf of the City of Espanola (“City”), pursuant to the Court’s Order of June 12, 2018 [Doc. 2989]. The City did not concur in the Joint Status Report the Pueblo of Ohkay Owingeh (“Ohkay Owingeh”) [Doc. 2993] filed today because the City has concerns that the settlement negotiations are not progressing with the City because Ohkay Owingeh’s factual claims are ever-expanding and the legal bases of some these claims are uncertain. The City shares similar concerns in the companion case *State of New Mexico, ex rel. State Engineer v. Aragon*, No. 69-CV-07941 (MV/KK) and so it has also filed a Status Report in that case.

1. **Settlement Negotiations**

The claims between Ohkay Owingeh and the City could have been settled a year-and-a-half-ago; however since the last status report filed on June 8, 2018, Ohkay Owingeh’s factual claims have expanded and are not yet final, and the underlying legal bases of these claims are uncertain. As a result, negotiations have transformed into a moving target, whereby the City has

been unable to obtain finality with regard to Ohkay Owingeh's claims in the *Abbott* Adjudication.

Settlement discussions in the preceding six-months between the City and Ohkay Owingeh occurred on the following dates:

November 30: Telephonic meeting among certain settlement parties

Presently, Ohkay Owingeh anticipates that the compilation and analyses of technical data and studies necessary to facilitate the settlement will be completed by March 2019, despite that the United States filed its Subproceeding Complaint on behalf of [Ohkay Owingeh] [Doc. 2462] (formerly, Pueblo of San Juan) on February 28, 2005; Ohkay Owingeh filed its own Subproceeding Complaint [Doc. 2467] on April 1, 2005; and Ohkay Owingeh filed its evidentiary reports of stating its final claims in 2006.

Ohkay Owingeh and the United States are currently engaged in ten such technical studies. An additional study addresses non-Indian and regional water interests, which are not needed to resolve Ohkay Owingeh's claims as between it and the City. Ohkay Owingeh has proposed a groundwater model and anticipates that the groundwater model necessary to reach a settlement and to administer its terms will be completed by December 2019, although the City remains unpersuaded about the efficacy of this model. The Parties believe that progress on all of the outstanding issues would be facilitated by the assistance of a professional facilitator and the Parties are actively discussing this step.

2. Scheduling Dispositive Motions

At this time, the City does not believe the Court needs to schedule the filing and briefing of motions for summary judgment or other dispositive motions within the next six months, but the City will continue to actively review this need.

3. Rescheduling the Trial

Presently, the City does not believe that the Court needs to schedule trial at this time, but the City will continue to actively review this need.

4. Other Matters

The City agrees with the filing of a joint status report six months from now, on June 10, 2019, at which time it will report to the Court on its progress and on the question of whether it believes the Court should schedule dispositive motions or otherwise resume litigation.

Respectfully submitted,

/s/ Cristina A. Mulcahy

Jay F. Stein

jfstein@newmexicowaterlaw.com

Cristina A. Mulcahy

camulcahy@newmexicowaterlaw.com

P.O. Box 2067

Santa Fe, NM 87504-2067

(505) 983-3880

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December 2018, I filed the foregoing electronically through the CM/ECF system, which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Cristina A. Mulcahy
Cristina A. Mulcahy